

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

-----X
**CELESTE WILLIAMS, LAUREN CRUZ,
EMANUEL O'NEALE, BRANDON
STURMAN, LATRESHA HALL,
LAKEISHA MITCHELL, CHRISTINE
BORBELY, JULIE GARIBALDI and
JANINE APONTE, on behalf of themselves
and others similarly situated,**

INDEX NO: 07cv3978-LAP

Plaintiffs,

v.

**TWENTY ONES INCORPORATED d/b/a
THE 40/40 CLUB, SHAWN CARTER p/k/a
JAY-Z, JUAN PEREZ and DESIREE
GONZALES,**

Defendants.

-----X

DECLARATION OF ALEX MASOTTA

I, Alex Masotta, under penalty of perjury, affirm as follows:

1. I am a New York resident and an opt-in plaintiff in the above-captioned matter.
2. I submit this declaration based on personal knowledge unless indicated otherwise.
3. I was employed as a Server at The 40/40 Club sports bar located at 6 West 25th

Street from approximately October 2004 through March 2005.

4. Throughout my employment at The 40/40 Club, I was not paid the minimum wage for each hour that I worked. Instead, I only received tips. Based on conversations with other employees of The 40/40 Club, such as Christine Doyle, Brian Lamkin and Courtney (last name unknown), and what I witnessed, I know that it was the common practice of defendants to not pay its employees who received tips a minimum wage and/or hourly wage for any hours of work.

5. I never received a paycheck from The 40/40 Club during my employment. Therefore, I did not receive anything which reflected my hours of work, the wages I was supposed to receive, or any withholdings for taxes. Based on conversations with other employees of The 40/40 Club and what I witnessed, I know this was the common practice of defendants.

6. During my employment, I regularly worked more than forty hours in a week. However, I was not paid time and a half for hours worked in excess of forty in a week. The 40/40 Club's failure to pay overtime is reflected in the time report attached as Exhibit A. Based on conversations with other employees of The 40/40 Club and what I witnessed, I know it was the common practice of defendants to not pay its employees an overtime premium. For example, I am personally aware that Christine Doyle, Brian Lamkin and Courtney (last name unknown) worked more than 40 hours without being paid overtime at time and a half.

7. The time report attached as Exhibit A also shows that I worked in excess of ten (10) hours per workday for defendants but I was never paid a "spread of hours" premium. I have personally witnessed other employees working shifts of more than ten (10) hours. Based on conversations with these employees, I know it was the common practice of defendants to not pay a "spread of hours" premium for workdays in excess of ten (10) hours.

8. Attached as Exhibit B are my alleged payroll reports provided by defendants and shown to me by my lawyers. I did not receive any payroll reports or pay checks during my employment at The 40/40 Club. Therefore, I never saw these documents prior to this lawsuit. Moreover, I have no reason to believe that these alleged payroll reports are an accurate reflection of my working hours at The 40/40 Club.

9. Attached as Exhibit C are my alleged W-2s provided by defendants and shown to me by my attorneys. I have no reason to believe that these alleged W-2s are an accurate

reflection of what I was actually paid in wages. Furthermore, based on conversations with other employees of The 40/40 Club, including Courtney (last name unknown) and what I witnessed, I know it was the common practice of defendants to not provide W-2s to its employees.

10. I believe that portions of my tips were retained by defendants. The 40/40 Club did not provide us with, or require us to fill out, any sort of tip declaration form. Because The 40/40 Club did not provide us with any records establishing the amount of tips I should have received, I have no independent means of verifying these amounts. However, based on the tips given to me by patrons and what was eventually paid to me by defendants, I believe that I did not receive all of my tips due.

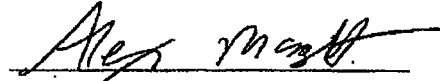
11. If a patron of The 40/40 Club did not sign their credit card receipt, defendants retained the disputed tip for ninety (90) days. I know this happened to Courtney (last name unknown). Based on what I witnessed and the experiences of other employees at The 40/40 Club, I know this was the common practice of defendants.

12. I was not paid any direct wage by The 40/40 Club. Because The 40/40 Club never paid me any direct wages, I was not paid the wages I was owed in a timely manner. Other employees, including Christine Doyle, Brian Lamkin and Courtney (last name unknown), have reported to me that they were not paid any direct wages by The 40/40 Club. Therefore, I know that it was the common practice of defendants to not pay its employees in a timely manner.

13. If a patron left The 40/40 Club without paying the bill, defendants would force its employees to pay the bill with his/her own money. For example, I had a customer walk out without paying and The 40/40 Club required me to pay the full amount of the bill. I know that Christine Doyle, Brian Lamkin and Courtney (last name unknown) all had similar experiences.

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct.

Executed this 4 day of January, 2008.

A handwritten signature in cursive script, appearing to read "Alex Masotta", written over a horizontal line.

Alex Masotta

EXHIBIT A

40/40 NYC

PAGE: 1

REPORT DATE: 05/29/2007

REPORT TIME: 18:12:37.59

Payroll Report for the period from Fri Oct 1, 2004 to Sun Oct 31, 2004

REG regular OTW ovt-week OTD ovt-day MSC misc pay SAL salary ADJ adjustment DEL deleted punch * Rate changed in punch
 Types of punches not included in regular or overtime calculation: PADJ prev.period adjustment HOL holidays SHDF shift diff.pay

NASOTTA, ALEX	0395	Department	Job	Tips	Pool Type Hours	Rate	Total
		FRONT OF HOUSE	SERVER		REG 158.9000	3.300	524.37
					OTD 34.2333	0.000	0.00
Total: 158.9000 regular hours (524.37) and 34.2333 overtime hours(0.00) and 0.0000 other hours							Total Amt 524.37

Department	Job	Day	Date	Rate	Type	In	Out	Hrs
FRONT OF HOUSE	SERVER	Fri.	10/1	3.300		5:55p	10:42p	4.78
		Sat.	10/2	3.300*		11:24a	5:06a	17.70
		Sun.	10/3	3.300*		11:53a	1:45a	13.87
		Tue.	10/5	3.300		6:38p	1:57a	7.32
		Wed.	10/6	3.300*		5:32p	1:40a	8.13
		Sat.	10/9	3.300		2:39p	2:39p	0.00
				3.300*		2:39p	4:50a	14.18
		Sun.	10/10	3.300		7:09p	1:22a	6.22
		Mon.	10/11	3.300*		5:34p	1:38a	8.07
		Tue.	10/12	3.300		5:59p	1:42a	7.72
		Wed.	10/13	3.300		5:46p	1:01a	7.25
		Thu.	10/14	3.300		5:32p	11:42p	6.17
		Fri.	10/15	3.300		5:46p	10:30p	4.73
		Mon.	10/18	3.300*		5:45p	2:05a	8.33
		Tue.	10/19	3.300		6:08p	1:08a	7.00
		Wed.	10/20	3.300		6:01p	1:37a	7.60
		Sat.	10/23	3.300*		2:06p	4:48a	14.70
		Sun.	10/24	3.300		6:28p	1:11a	6.72
		Tue.	10/26	3.300		6:06p	1:47a	7.68
		Thu.	10/28	3.300		9:11p	2:59a	5.80
		Fri.	10/29	3.300*		5:11p	4:46a	11.58
		Sat.	10/30	3.300*		7:20p	5:00a	9.67
		Sun.	10/31	3.300		7:32p	3:27a	7.92

***Total wages for selected employees: 524.37

POS itouch

CONFIDENTIAL
D05496

EXHIBIT B

EXHIBIT C

Copy C, for employees records

a Control number 0020-Y156		000323-000100		b Void		c Employee's name, address, and ZIP code TWENTY ONES INCORPORATED 6 WEST 25TH STREET NEW YORK NY 10010		Department of the Treasury - Internal Revenue Service OMB No. 1545-0048					
3 Employer's identification number 55-0787351		4 Employer's social security number [REDACTED]		13 Employer's employment status Part-time [REDACTED]		14 Other NYS DI		6 Employee's name, address, and ZIP code ALEX MASOTTA [REDACTED]		1 Department of the Treasury - Internal Revenue Service OMB No. 1545-0048			
12 See instrs. for Box 12		16 Other NYS DI		6.00		8 ALEK MASOTTA		1 Wages, tips, other compensation 5205.65		2 Federal income tax withheld 418.71			
13 Social security wages 1105.65		4 Social security tax withheld 322.71		5 Medicare wages and tips 5205.65		6 Medicare tax withheld 75.47		7 Social security tips 4100.00		8 Allocated tips			
9 Advance EIC payment		10 Dependent care benefits		11 Nonqualified plans									
15 State NY		Employer's state ID. No. 550787351		16 State wages, tips, etc. 5205.65		17 State income tax 97.58		18 Local wages, tips, etc. 5205.65		19 Local income tax 106.46		20 Locality name NY NYC	

This information is being furnished to the Internal Revenue Service

Copy 5, to be filed with employee's FEDERAL tax return

a Control number 0020-Y156 000323-000100		b Employee's name, address, and ZIP code TWENTY ONES INCORPORATED 6 WEST 25TH STREET NEW YORK NY 10010		c Department of the Treasury - Internal Revenue Service OMB No. 1545-0008			
d Employee's classification number 55-0787351		e Employee's social security number [REDACTED]		1 Wages, tips, other compensation \$205.65		2 Federal income tax withheld 418.75	
f Statutory employee Independent plan		g Self-employment tax rate 14.00%		3 Social security wages 1105.65		4 Social security tax withheld 322.75	
12 See instructions for Box 12		14 Other NYS DI 6.00		5 Medicare wages and tips \$205.65		6 Medicare tax withheld 75.47	
		h Employee's name, address, and ZIP code ALEX MASOTTA [REDACTED]		7 Social security tips 4100.00		8 Allocated tips	
				9 Advance EIC payment		10 Dependent care benefits	
				11 Nonqualified plans			
15 State NY		Employer's state I.D. No. 550787351		16 State wages, tips, etc. \$205.65		17 State income tax 97.58	
				18 Local wages, tips, etc. \$205.65		19 Local income tax 106.46	
						20 Locality name NY NYC	

The information is being furnished to the Internal Revenue Service

Copy 2, to be filed with employees' tax returns for any

[illegible]

*The information is being furnished to the Internal Revenue Service.

...and the other is the fact that the ...

a Employer number 0020-X156 000323-000100		Void X		c Employer's name, address, and ZIP code TWENTY ONES INCORPORATED 6 WEST 25TH STREET NEW YORK NY 10010		Department of the Treasury - Internal Revenue Service OMB No. 1545-0008					
b Employer's identification number 55-0787351		d Employer's social security number [REDACTED]		e Employee's name, address, and ZIP code ALEX MASOTTA [REDACTED]		1 Wages, tips, other compensation		2 Federal income tax withheld			
13 Salaried employee		14 Other				3 Social security wages		4 Social security tax withheld			
12 See instructions for Box 12		14 Other				5 Medicare wages and tips		6 Medicare tax withheld			
						7 Social security tips		8 Allocated tips			
						9 Advance EIC payment		10 Dependent care benefits			
						11 Nonqualified plans					
15 State Employer's state I.D. No.		16 State wages, tips, etc.		17 State income tax		18 Local wages, tips, etc.		19 Local income tax		20 Locality name	

Redacted

CONFIDENTIAL
D06252